

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
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Spectrum Policy Task Force Seeks Public)	ET Docket No. 02-135
Comment on Issues Related to)	
Commission's Spectrum Policy)	
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)	

To: The Commission

REPLY COMMENTS

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, on behalf of its clients listed in Attachment A hereto ("Private Radio Commenters"), hereby replies to the comments filed in the above-captioned proceeding.

The Comments filed in this proceeding reflected the depth and breadth of the questions asked by the Commission. While the Private Radio Commenters understand the impetus to move toward a more streamlined regulatory process, it is clear that one size will not fit all. The regulation of private radio is one area where the suggested market area approach and geographic licensing scheme will not work.

I. REBANDING THE SHARED SPECTRUM WOULD NOT BE WISE

The Private Radio Commenters disagree with the suggestion made by Marcus Communications, LLC ("Marcus") that the Commission should "re-band" the 450-470 MHz

band.¹ Marcus admits that the current licensing scheme with frequency coordination "has generally created efficient use" of the 450-470 MHz spectrum,² but still advocates rebanding.

Marcus claims that the interleaving of frequencies in the band increases the potential for creating significant interference among users, and cites the Commission's 800 MHz NPRM as the basis for its conclusion.³ However, the situation in the 800 MHz band is completely different. The interference to public safety has been caused primarily by commercial SMR and cellular systems that operated on adjacent frequencies too close to site-based systems. It is much easier to prevent and control interference to site-based systems. The coordinators and licensees generally know from the Commission's records where adjacent channel site-based licensees are operating, which is not the case with market-area licensed systems.

Marcus ignores the fact that most conventional private radio systems do not require multiple channels or large operating areas. Under Marcus' scheme, these entities would be able to obtain spectrum from band managers or commercial operators. However, the band manager scheme is a new one, and there is no evidence of its success, or lack thereof, on the record. The Commission should not rush to consign what admittedly has been a successful and efficient licensing scheme to the scrap heap in favor of an alternative that has not yet proven itself feasible, much less successful. In addition, Marcus does not seem to recognize that small businesses that only need limited communications may not be sufficiently profitable for

¹ Marcus *Comments*, at p. 6.

² *Id.* at p. 4.

³ Improving Public Safety Communications in the 800 MHz Band; consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, WT Docket No. 02-55, *Notice of Proposed Rulemaking*, 17 FCC Rcd 4872.

commercial operators to serve, especially if the service needed turns out to be incompatible with other uses of the frequency. The band manager concept was not designed as, and should not be viewed as, a fix for every internal radio need. As described in the comments of the Private Radio Commenters and the Land Mobile Communications Council, many private radio licensees require customized coverage, channel availability, and the security of having their own license. Band manager operations may not fit these needs.

II. VITALLY IMPORTANT SERVICES SHOULD NOT BE MADE TO DEPEND ON UNRELIABLE COMMERCIAL COMMUNICATIONS

The Private Radio Commenters support the comments of Dominion Resources, Inc. ("Dominion"). Dominion suggests that the Commission recognize that critical infrastructure providers not be required to rely on commercial providers of wireless services because these systems are less reliable than proprietary communications systems.⁴ Private Radio Commenters concur wholeheartedly, but would have the Commission recognize that other services, while not labeled "critical infrastructure," are vitally important and require the same level of communications reliability. An alarm service, a trucking company and a paging service can each be called upon to respond immediately to emergencies or crises, the same emergencies or crises that can and do swamp commercial services on a regular basis. To require such entities to rely on commercial services creates the potential for serious delay in response time and recovery from an emergency or other crisis. In addition, Private Radio Commenters have noted that the large commercial carriers are less responsive to the needs of their customers and are more expensive than operating an in-house system.

The Private Radio Commenters also agree with the United Telecom Council ("UTC") that "priority access service" is not an adequate solution that would enable the Commission to migrate all private radio users to commercial services.⁵ Many of the vitally important services are not classified (correctly or incorrectly) as critical infrastructure services and thus presumably would not qualify for priority access. Yet the job of the public safety community often cannot be completed without the aid of the vitally important services that support the public safety efforts. An alarm company can alert public safety officials to a crime, a medical emergency or a fire. An emergency road service can clear a vital traffic artery after an accident. A trucking company can deliver urgently needed supplies after a hurricane or earthquake. And a paging company can alert medical personnel, firefighters or police that they are urgently needed. None of these uses would qualify for priority access, but their absence when needed would be felt keenly.

III . OTHER COMMENTS

Two themes emerge from the comments in this proceeding. The first is that many parties are anxiously awaiting the Commission's release of an Order in the *Secondary Markets* proceeding.⁶ The second theme is that the Commission should be more involved in setting standards for equipment.⁷ The Private Radio Commenters support both.

⁴ Dominion *Comments*, at p. 7.

⁵ United Telecom Council *Comments*, at p. 12.

⁶ See, e.g., NTCA *Comments*, at p. 8, Telephone and Data Systems, Inc. *Comments*, at pp. 5-6, Winstar Communications, LLC, *Comments*, at p. 9, The Boeing Company *Comments*, at p. 9. Promoting Efficient Use of Spectrum Through Eliminating Barriers to the Development of Secondary Markets, Notice of Proposed Rulemaking, WT Docket No. 00-230, 15 FCC Rcd 24203, 24209 ¶ 17 (2000) (*Secondary Markets NPRM*).

⁷ See, e.g., AT&T Wireless Services, Inc. *Comments* at p. 20, Motorola *Comments* at 19.

A decision in the Secondary Markets proceeding could increase the amount of spectrum available for use. Entities like Marcus could potentially find sufficient spectrum to offer new and innovative services without a rebanding of the 450-470 MHz band. In addition, the resolution could enable some operators in rural areas to provide local services that currently are not available, although the comments are clear that spectrum leasing will not be sufficient by itself to create spectrum access for rural America.⁸

The Private Radio Commenters also agree that the Commission could facilitate the development of spectrum efficient communications by setting standards for equipment. Equipment development is a very expensive undertaking; many companies shy away from developing new technologies due to the risk that the technology will not "take off" and the company will lose money on the venture.

Today's economy will not support a great deal of research for new technologies without some assurances that the technology will be adopted. Incentives are different, of course, for pursuing improvements to existing technologies, but even there, the Commission could encourage improvements. Perhaps the Commission could establish a technology incubator program under the auspices of its Office of Engineering and Technology, or develop an outreach program to encourage students to pursue a career in engineering or technology development.

⁸ Cite NTCA *Comments*, at p. 8, Blooston, Mordkofsky, Dickens, Duffy & Prendergast *Comments*, at pp. 6-7, Rural Telecommunications Group *Comments*, at p. 9.

IV. CONCLUSION

The Private Radio Commenters find it telling that only a single entity supported altering the current licensing scheme for the frequencies below 512 MHz. And that entity, Marcus, admitted in its comments that the current licensing scheme has resulted in efficient use of the spectrum. Thus, the Private Radio Commenters believe that the overall record does not support making any changes to the licensing and usage of the shared frequencies below 512 MHz.

Respectfully Submitted,

Private Radio Commenters

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